

Sunset Public Hearing Questions for  
**SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT**  
Created by Section 56-14-201, *Tennessee Code Annotated*  
(Sunset termination June 2013)

1. Provide a brief introduction to the Surplus Lines Insurance Multi-State Compliance Compact, including information about its mission, purpose and duties. Who, in Tennessee, has primary responsibility for execution of provisions of the compact?

The Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT) is an interstate compact designed to, among other things:

- implement provisions of the 2010 federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) related to surplus lines insurance
- facilitate the sharing of surplus lines insurance premium taxes among member states, including by adopting rules governing premium tax payment, reporting, and allocation
- develop uniform rules regarding foreign insurer eligibility and surplus lines insurance policyholder notices

Article V, Subtitle B, Part I of the Dodd-Frank Act—cited as the Nonadmitted and Reinsurance Reform Act (NRRA)—provided that no state other than the home state of an insured, as defined, may require any premium tax payment for nonadmitted/surplus lines insurance. The NRRA expressly permitted states to enter into an interstate compact to allocate premium taxes among the states.

The Commissioner of the Tennessee Department of Commerce and Insurance (TDCI) is delegated primary responsibility for executing provisions of the compact under 56-14-113(b)(4).

2. What other states have entered into the compact with Tennessee? Has the threshold established in Article XIII, Section 2, been reached for the compact to become effective and binding and for the commission to be able to adopt rules and create a clearinghouse, and was it reached by February 28, 2012, as specified in Article XVI, Section 2(e)? If the February 28, 2012, deadline was not met, has Tennessee entered into any other cooperative agreements, compacts or reciprocal agreements as authorized in that same section of the compact?

The following eight states enacted SLIMPACT legislation in 2011: Alabama, Indiana, Kansas, Kentucky, New Mexico, North Dakota, Rhode Island, and Vermont. No state enacted SLIMPACT in 2012 and TDCI is not aware of any state that has SLIMPACT legislation pending.

While SLIMPACT became effective and binding upon enactment of the compact by two states, the threshold established in Article XIII, Section 2, for the compact to become

effective for purposes of adopting rules and creating a premium tax clearinghouse has not been reached.

Tennessee has not entered into any other cooperative agreements, compacts or reciprocal agreements as authorized under Article XVI, Section 2.

3. Have any party states withdrawn from the compact or filed notice of their intentions to withdraw under the provisions of Article XIV? If so, which state or states and what were their stated reasons for withdrawing?

TDCI is not aware of any SLIMPACT states that have withdrawn from the compact or that have filed notice of their intention to withdraw.

4. Article III provides that the compacting states “create and establish a joint public agency known as the surplus lines insurance multi-state compliance compact commission.” Has the commission been created and established and, if so, where is the principal office of the commission located?

The SLIMPACT Commission has been established and Commission members have approved Kentucky Insurance Commissioner Sharon Clark as the Commission’s interim chair. However, the compact does not comprise the required number of states (ten) for the Commission to approve rules or create a premium tax clearinghouse. Commission members have determined not to move forward with bylaws and rules for rulemaking without a tenth member state.

The Commission does not have dedicated staff or a principal office.

5. Please explain the scope of the rules the commission can adopt under the provisions of Article III, Section 3 and Article IV and explain how those rules differ from rules issued by each state in the regulation of surplus lines insurance? If the rules adopted by the commission are binding on the member states, what provisions are made for the rules to be reviewed by the public, the Tennessee Attorney General’s office and the Tennessee General Assembly? Have any rules been adopted yet under the provisions of Article IV?

The SLIMPACT Commission has authority to adopt rules to facilitate the collection and distribution of surplus lines insurance premium taxes on multi-state insurance risks, including rules regarding allocation formulas, methods for premium tax payment and reporting, and the establishment of a central premium tax clearinghouse, among other things. The Commission has authority to establish uniform foreign insurer eligibility requirements, consistent with NRRA provisions, and uniform policyholder notices. The Commission also has authority to establish rules to subject multi-state surplus lines risks to the regulatory compliance requirements of the home state exclusively. It is important to note that several of such home state requirements mirror NRRA provisions.

The Commission is required to promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act (5 U.S. C., Section

552b). The Commission is also required to establish bylaws to govern its conduct—including public notice and access to compact meetings.

Draft bylaws were based substantially on those of the Interstate Insurance Product Regulation Compact. The IIPRC is a 41 jurisdiction compact that provides speed-to-market for asset-backed insurance products. Tennessee has joined the IIPRC.

Commission members have decided not to adopt any rules without a tenth member state.

6. Article VI, Section 1(a) provides that each member state “shall have and be limited to one (1) member” and that “each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation which enacts this compact.” Please describe the selection process used in Tennessee and specify where it is set forth in this enabling legislation?

SLIMPACT legislation included standard interstate compact language related to the selection of Commission members. Tennessee enabling legislation delegated the Commissioner of the Tennessee Department of Commerce and Insurance (TDCI) authority to “contract or compact, pursuant to part 2 of this chapter, with other states for the purpose of collecting and disbursing to reciprocal states...any funds collected pursuant to subsection (a) that are applicable to other properties, risks, or exposures located or to be performed outside of this state.” (56-14-113(b)(4)) The second part of the enabling legislation enacted SLIMPACT into law.

7. Has the compact or the commission issued any written reports of their status and progress? If so, who has received copies of those reports? Please attach electronic copies of any such reports.

The compact/Commission has not issued any written reports of their status or progress.

8. What is the cost to Tennessee for the state to participate in the compact and what types of expenses are involved? How much revenue has the state received from the collection of insurance premium taxes under the compact? What is anticipated in new revenue from such taxes in the immediate future?

Any costs to Tennessee to participate in SLIMPACT conference calls, webinars, and meetings have been minimal. If the compact becomes fully operational and meetings are held outside of the National Association of Insurance Commissioners (NAIC) annual meeting schedule, additional transportation/lodging expenses are to be expected.

Tennessee has not received any insurance premium taxes from other SLIMPACT states under the compact as SLIMPACT is not operational for tax purposes. As the compact is drafted, Tennessee would not begin to receive any revenue through SLIMPACT until clearinghouse operations begin on the first January 1st or July 1st following the first anniversary of the Commission effective date (enactment by a tenth state). (56-14-201, Article XIII, Section 2).

The question of how much tax revenue Tennessee will lose or gain under the compact remains unresolved, though Tennessee is currently the state with the largest share of total surplus lines insurance premiums within the compact. Tennessee could end up sharing more premium tax revenue with other SLIMPACT states than Tennessee would receive from other states with multi-state risks that are partially located in Tennessee. It is possible that Tennessee would receive as much or more premium tax revenue if it taxed 100 percent of home-stated multi-state risks and kept the monies.

9. Describe any items related to the compact that require legislative attention and your proposed legislative changes.

There are not any items related to the compact that require legislative attention. Legislative changes to interstate compacts are often difficult to implement as compacts must be adopted with substantially similar language by all member states.

10. Should Tennessee's participation in the compact be continued? To what extent and in what ways would the absence of the compact affect the public health, safety or welfare?

TDCI recommends that legislators end Tennessee's participation in SLIMPACT at the risk of losing premium tax revenue to other compacting states. TDCI further recommends that Tennessee monitor federal and state surplus lines reforms to evaluate whether the state would most benefit as (a) a non-allocating state taxing 100 percent of premiums on home-stated multi-state risks (the default position should Tennessee leave SLIMPACT), (b) a member of SLIMPACT, or (c) a party to a Nonadmitted Insurance Multistate Agreement (NIMA). Tennessee could at any time reenact legislation to join SLIMPACT or enact legislation to join NIMA if either mechanism proved in the state's best financial interest.

Withdrawing Tennessee from SLIMPACT appears consistent with the evaluation committee's objectives under 4-29-105, particularly Section 3—*The elimination of inactive entities*—and Section 5—*The elimination of inefficient, ineffective, unnecessary or undesirable entities*. As we describe above, SLIMPACT has not reached its ten state threshold to commence operations, and TDCI is not aware of any state that may join the compact in the foreseeable future. The state of Tennessee's status as the largest SLIMPACT state (by premium volume) creates a potentially undesirable scenario where Tennessee, in effect, becomes a "donor state"—a state that allocates more tax revenue than it brings in from other member states.

The absence of SLIMPACT would have no significant impact on the public health, safety or welfare.

11. Please list all compact programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

TDCI is not aware of any compact programs or activities that receive federal financial assistance.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. Sec. 42.102(c)]

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)]

***If the compact does receive federal assistance, please answer questions 12 through 20. If the compact does not receive federal assistance, proceed directly to question 19.***

12. Does the compact prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
13. Does the compact have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.
14. To which state or federal agency (if any) does the compact report concerning Title VI? Please describe the information the compact submits to the state or federal government and/or provide a copy of the most recent report submitted.
15. Describe the compact's actions to ensure that compact staff and clients/program participants understand the requirements of Title VI.
16. Describe the compact's actions to ensure it is meeting Title VI requirements. Specifically, describe any compact monitoring or tracking activities related to Title VI, and how frequently these activities occur.

17. Please describe the compact's procedures for handling Title VI complaints. Has the compact received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
18. Please provide a breakdown of current compact staff by title, ethnicity, and gender.
19. Please list all compact contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

TDCI is not aware of any contracts that have been signed for contractor/business services. Commission members have received assistance from The Council of State Governments and the National Conference of Insurance Legislators staff on what we understand is a volunteer basis.

20. Describe how the compact ensures that minorities are included in needs assessments or any other discussions regarding program needs.

Not applicable.